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DEPARTMENT OF EDUCATION

34 CFR Chapter II

Docket ID ED-2019-OESE-0142

Proposed priorities, requirements, definitions, and selection criteria--Indian Education Discretionary Grants Programs--Native American Language (NAL@ED) Program  
AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities, requirements, definitions, and selection criteria.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education proposes priorities, requirements, definitions, and selection criteria for the Native American Language (NAL@ED) program, Catalog of Federal Domestic Assistance (CFDA) number 84.415B. We may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2020 and later years. We take this action to support the development, improvement, expansion, or maintenance of programs that support elementary or secondary schools in using Native American and Alaska Native languages as the primary language of instruction.

DATES: We must receive your comments on or before [INSERT

DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Help."

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments, address them to Tanya Tullos, U.S. Department of Education, 400 Maryland Avenue, SW, room 3W234, Washington, DC 20202-5970.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only

information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Angela Hernandez-Marshall, U.S. Department of Education, 400 Maryland Avenue, SW, room 3W113, Washington, DC 20202. Telephone: (202) 205-1909. Email: [angela.hernandez-marshall@ed.gov](mailto:angela.hernandez-marshall@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, definitions, and selection criteria. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the proposed priority, requirement, definition, or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the

effective and efficient administration of this program.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirements, definitions, and selection criteria by accessing Regulations.gov. You may also inspect the comments in person at 400 Maryland Avenue, SW, Washington, DC, between the hours of 9:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities, requirements, definitions, and selection criteria. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The purposes of this program are to

- (1) support schools that use Native American and Alaska Native languages as the primary language of instruction;
- (2) maintain, protect, and promote the rights and freedom of Native Americans and Alaska Natives to use, practice,

maintain, and revitalize their languages, as envisioned in the Native American Languages Act of 1990 (25 U.S.C. 2901 *et seq.*); and (3) support the Nation's First Peoples' efforts to maintain and revitalize their languages and cultures, and to improve educational opportunities and student outcomes within Native American and Alaska Native communities.

Program Authority: Section 6133 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7453).

Background: The NAL@ED program was first authorized in late 2015 by the Every Student Succeeds Act, which also reauthorized the ESEA. For the first NAL@ED competition, held in FY 2017, we waived notice-and-comment rulemaking, as permitted under section 437(d)(1) of the General Education Provisions Act, to establish priorities, definitions, and requirements consistent with the statute, after holding Tribal consultations in order to gather feedback about how the new program should be implemented. We published the notice inviting applications (NIA) for the FY 2017 competition on May 4, 2017 (82 FR 20869). We propose in this document to retain some of the definitions and requirements from the FY 2017 competition. Note that the terms "Native American" and "Native American language"

are defined in the statute to include Alaska Native people and languages. Thus, in this document when we use the term "Native American" it includes Alaska Natives.

Under section 6133(b)(2) of the ESEA, any of the following entities that has a plan to develop and maintain, or to improve and expand, programs that support the entity's use of a Native American or Alaska Native language as the primary language of instruction in elementary schools or secondary schools, or both, is eligible for grants under the NAL@ED program:

- (a) An Indian Tribe.
- (b) A Tribal College or University (TCU).
- (c) A Tribal education agency.
- (d) A local educational agency (LEA), including a public charter school that is an LEA under State law.
- (e) A school operated by the Bureau of Indian Education (BIE).
- (f) An Alaska Native Regional Corporation (as described in section 3(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(g))).
- (g) A private, Tribal, or Alaska Native nonprofit organization.
- (h) A non-Tribal for-profit organization.

In this document, the Assistant Secretary proposes

four priorities as well as definitions, requirements, and selection criteria for this program to clarify new and existing requirements and to govern future grant competitions. The proposed definitions and one of the proposed priorities in this document are the same as those used in the FY 2017 competition, but three of the four proposed priorities, the proposed requirements, and all but three proposed selection factors in this document are new. Additionally, one statutory requirement calls on the Department to ensure that a diversity in languages exists among funded applicants. The Explanatory Statement to the Department of Education Appropriations Act, 2020, further emphasized Congress's interest in ensuring this program supports the most extensive possible geographical distribution and language diversity. To adhere to the statutory requirement and respond to the Explanatory Statement, the Department will take steps to minimize the dominance of one language represented among funded awards, and we are specifically asking for public input on how best to implement this requirement.

We note that there are some statutory definitions that will govern future NAL@ED competitions. For ease of reference and so that the public is able to understand the definitions that will govern the competition and program,

we have included those that are most relevant to NAL@ED applicants and grantees in this notice of proposed priorities, requirements, definitions, and selection criteria (NPP), but we are not seeking public comment on those provisions.

Tribal Consultation: Prior to developing these proposed priorities, requirements, definitions, and selection criteria, the Department held a Tribal consultation on April 4, 2019, in Traverse City, Michigan. The consultation was also accessible online through a webinar. The Department announced this Tribal consultation through its external stakeholder listserv that includes Tribal leaders, Tribal educational agencies, Tribal organizations, Office of Indian Education discretionary and formula grantees, and national organizations representing Tribal communities.

The Department sought feedback from Tribal officials on the program broadly and on a series of topics. First, the Department sought feedback on potential priorities that would govern future NAL@ED competitions, including priorities for different types of applicants such as: applicants proposing new Native American language programs, applicants proposing to expand existing programs, applicants representing State-funded programs, and



applicants representing Tribally-funded programs. Noting that these different types of applicants would have different levels of capacity to implement Native American language programs, participants expressed support for establishing separate priorities for new programs versus existing programs. However, almost no participants expressed support for establishing separate priorities for State-funded versus Tribally-funded schools, and one participant commented that some Tribally-funded schools also operate under State-funded structures and may not be categorized as one or the other, potentially creating confusion.

The Department also solicited feedback from Tribal officials on several potential requirements that apply to NAL@ED. First, the Department sought feedback on how to implement the statutory requirement in section 6133(d) of the ESEA to ensure a diversity in languages among grantees. Several participants commented that diversity of languages should be considered based on language dialect, and not on language family alone, given the vast number of Tribes that may be part of any one language family. The Department also asked for input on how to ensure that applicants had sufficient levels of cooperation among their proposed partners. Noting the importance of a strong partnership to

a successful project, nearly all participants expressed support for requiring a memorandum of agreement that describes explicit roles and responsibilities of each partner. The Department also sought feedback on whether NAL@ED grantees should be required to administer Native American language proficiency assessments, as well as whether grantees should be encouraged to develop Native American language content assessments. ex

PROPOSED PRIORITIES:

Background: We propose Proposed Priority 1, develop and maintain new Native American language programs, and Proposed Priority 2, expand and improve existing programs, due to their alignment with the legislative purpose to support both types of programs, and because during Tribal consultation, Tribal leaders and their designees expressed strong support for funding opportunities for both existing programs and new programs. A program would be considered a new program if it has been in place for not more than three years prior to the time of application, since a program in place for less than three years would likely require more than just expansion and improvement, but also development activities. Consistent with the Explanatory Statement to the Department of Education Appropriations Act, 2020, the Department will give the same consideration to applicants

that propose to provide partial immersion schools and programs as to full immersion, as the local Tribes, schools, and other applicants know best what type of program will most effectively assist their youth to succeed.

Proposed Priority 3, supporting project sustainability through the use of title VI formula grant funds, was used in the FY 2017 competition. Tribal leaders supported this priority, and we believe it would increase the likelihood that grantees leverage other Department funding streams that share the same legislative intent of promoting Native language and culture.

Finally, Proposed Priority 4, preference for Indian applicants, expands on section 6143 of the ESEA, which calls for preference for certain Indian entities, by including BIE schools among the entities granted a preference. In addition, Proposed Priority 4 uses the term "Tribal College or University (TCU)," as defined in the ESEA, rather than "Indian institution of higher education." As a result, Proposed Priority 4 would provide a more expansive "Indian preference" and ensure greater consistency with the program's statutory list of eligible entities.

Proposed Priority 1--Develop and Maintain New Native

American Language Programs.

To meet this priority, an applicant must propose to develop and maintain a Native American language instructional program that--

(a) Will support Native American language education and development for Native American students, as well as provide professional development for teachers and, as appropriate, staff and administrators, to strengthen the overall language and academic goals of the school that will be served by the project;

(b) Will take place in a school; and

(c) Does not augment or replace a program of identical scope that was active within the last three years at the school(s) to be served.

Proposed Priority 2--Expand and Improve Existing Native American Language Programs.

To meet this priority, an applicant must propose to improve and expand a Native American language instructional program that--

(a) Will improve and expand Native American language education and development for Native American students, as well as provide professional development for teachers and, as appropriate, staff and administrators, to strengthen the overall language and academic goals of the school that will

be served by the project;

(b) Will continue to take place in a school; and

(c) Is currently offered at the school(s) to be served.

Proposed Priority 3--Support Project Sustainability with Title VI Indian Formula Grant Funds.

To meet this priority, an applicant or a partner must receive, or be eligible to receive, a formula grant under title VI of the ESEA, and must commit to use all or part of that formula grant to help sustain this project after the conclusion of the grant period. To meet this priority, an applicant must include in its application--

(a) A statement that indicates the school year in which the entity will begin using title VI formula grant funds to help support this project;

(b) The percentage of the title VI grant that will be used for the project, which must be a substantial percentage of the recipient's title VI grant; and

(c) The timeline for obtaining parent committee input and approval of this action, if necessary.

Proposed Priority 4--Preference for Indian Applicants.

To meet this priority, an application must be submitted by an Indian, Indian organization, Bureau of Indian Education (BIE) school or Tribal College or

University (TCU) that is eligible to participate in the NAL@ED program. A consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian Tribe, Indian organization, TCU, or BIE-funded school will also be considered eligible to meet this priority. In order to be considered a consortium application, the application must include the consortium agreement, signed by all parties.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the *Federal Register*. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

#### PROPOSED APPLICATION REQUIREMENTS

Background: We propose general application requirements (General Requirements) that are based on statutory language, but that have been modified to require that applicants provide the information needed to establish that they meet the eligibility requirements. The proposed General Requirements are similar to requirements used in the FY 2017 competition. We also propose an application requirement that involve a memorandum of agreement. During Tribal consultation, Tribal leaders and their designees expressed strong support for requiring a memorandum of agreement in cases where an applicant proposes to work with a partner. The Department also believes that an application requirement for a memorandum of agreement is needed in response to significant implementation challenges that current non-LEA grantees have encountered related to assessment data collection and professional development activities as a result of not having a formal agreement with the partner LEA. We propose to require that the

memorandum of agreement be signed and dated no earlier than four months prior to the submission of a NAL@ED grant application to ensure that the participating partners have established the agreement, as well as clear roles and responsibilities, based on the scope of work being proposed in the application, and not based on a pre-existing agreement that was intended to address goals and objectives outside the scope of the project.

Third, we propose an application requirement that LEAs consult with Indian Tribes or Tribal Organizations. For applicants that are LEAs that are subject to section 8538 of the ESEA, we propose to codify the statutory requirement that they have consulted with local Tribes prior to applying. Consistent with the statutory requirement, this proposed application requirement would help ensure meaningful engagement with and contributions from the Tribe(s).

Finally, we propose to require that an applicant provide information in its application to describe how it will use Title VI Indian Education formula grant funds to sustain the project. This would promote project stability and assist applicants in long-term planning.

The Assistant Secretary proposes the following application requirements for this program. We may apply



one or more of these requirements in any year in which this program is in effect.

Proposed Application Requirement 1--General Requirements

An applicant must include the following information in its application:

(a) Students to be served. The number of students to be served by the project and the grade level(s) of targeted students in the proposed project.

(b) Pre- and post-assessments. Whether a pre- and post-assessment of Native American language proficiency is available and, if not, whether grant funds will be used for developing such assessment.

(c) Program description. A description of how the eligible entity will support Native American language education and development, and provide professional development for staff, in order to strengthen the overall language and academic goals of the school(s) that will be served by the project; ensure the implementation of rigorous academic content that prepares all students for college and career; and ensure that students progress toward meeting high-level fluency goals in the Native American language.

Proposed Application Requirement 2--Memorandum of Agreement

Any applicant that proposes to work with a partner to carry out the proposed project must include a signed and dated memorandum of agreement that describes the roles and responsibilities of each partner to participate in the grant, including--

(a) A description of how each partner will implement the project according to the timelines described in the grant application;

(b) The roles and responsibilities of each partner related to ensuring the data necessary to report on the Government Performance and Results Act (GPRA) indicators; and

(c) The roles and responsibilities of each partner related to ensuring that Native American language instructors can be recruited, retained, and trained, as appropriate, in a timely manner.

This memorandum of agreement must be signed no earlier than four months prior to the date of submission of the application.

Proposed Application Requirement 3--LEA Consultation with Indian Tribes and Tribal Organizations

If an applicant is an affected LEA that is subject to ESEA section 8538, then the LEA is required to consult with appropriate officials from Tribe(s) or tribal organizations

approved by the Tribes located in the area served by the LEA prior to its submission of an application, on the contents of the application as required under ESEA section 8538. Affected LEAs are those that have 50 percent or more of its student enrollment made up of Native American students; or received an Indian education formula grant under Title VI of the ESEA in the previous fiscal year that exceeds \$40,000. (ESEA sec. 8538) The consultation must provide for the opportunity for officials from Indian Tribes or tribal organizations to meaningfully and substantively contribute to the application.

Proposed Application Requirement 4--Project Sustainability  
Leveraging Title VI Indian Education Formula Grant Funds

An applicant or a partner must certify that it receives, or is eligible to receive, a formula grant under title VI of the ESEA, and must commit to use all or part of that formula grant to help sustain this project after the conclusion of the grant period. An applicant must include in its application--

(a) A statement that indicates the school year in which the entity will begin using title VI formula grant funds to help support this project;

(b) The percentage of the title VI grant that will be used for the project, which must be a substantial

percentage of the recipient's title VI grant; and

(c) The timeline for obtaining parent committee input and approval of this action, if necessary.

#### PROPOSED PROGRAM REQUIREMENTS

Background: We are proposing three program requirements, the first of which applies to grantees and requires Native American language assessments. The second and third apply to the Department and relate to a diversity of languages and geographical distribution.

#### Proposed Program Requirement 1--Native American Language Proficiency Assessment

Background: We propose that grantees under the NAL@ED program be required to administer pre- and post-assessments of Native American language proficiency to students participating in their projects. Participants in the Tribal consultation expressed concern about making an assessment--either a Native American language proficiency assessment or a Native American language content assessment--a focus of the NAL@ED program. We agree that such a requirement should not be the focus of this program, but we believe that an assessment of Native American language proficiency is important to being able to gauge the success of the NAL@ED program as a whole, as well as the success of individual grantees. Additionally, we

believe that it is important for grantees to be able to assess the performance of their participating students. We note that all current grantees administer either oral or written assessments, or both. Assessments that would be required under this proposed requirement could take a variety of forms, including oral, written, or project-based, and be either formative or summative assessments. Accepting a wide variety of assessments is intended to minimize the burden of measuring students' progress toward high-level fluency goals. For example, current projects that support Native language programming for Pre-K-3 and Grades 6-8, respectively, incur assessment refinement and development costs that range from \$0 to \$30,000.

Proposed Program Requirement: Grantees must administer pre- and post-assessments of Native American language proficiency to participating students. This Native American language assessment may be any relevant tool that measures student Native American language proficiency, such as oral, written or project-based assessments, and formative or summative assessments.

Proposed Program Requirement 2--Diversity of Languages

Background: Section 6133(d) of the ESEA requires the Department to ensure that a diversity in languages exists among funded applicants to the maximum extent feasible. In

the Explanatory Statement Congress provided with the Department of Education Appropriations Act, 2020, Congress stated that these funds should "support the most extensive possible geographical distribution and language diversity." We are proposing to interpret the statutory requirement on diversity of languages by funding, in any year in which we make new awards, different projects with unique Native American languages. In the event that two or more projects that propose instruction in the same Native American language--that is, of the same dialect and in the same region--are scored and determined to be within funding range, the Department will award a grant to the project that receives the highest number of points, assuming such project is high-quality. The Department would then fund the next project focused on a different language, skipping other applicants whose projects would duplicate the highest scoring application serving an already funded language.

"Native American language" means the historical, traditional languages spoken by Native Americans. (ESEA sec. 8101(34)). To interpret the requirement to ensure a diversity of languages, the Department must first determine how to distinguish Native American languages from one another.

The Department did not receive suggestions during

Tribal consultation on a reference, or broadly accepted classification system, for distinguishing Native American languages from one another. Therefore, we are seeking comment from the public on whether to use region-specific and dialect-specific differences among Native American languages for the purposes of determining diversity. This would be consistent with, for example, the list of 191 Native American languages in the United States that are listed in UNESCO's Atlas of the World's Languages in Danger (<http://www.unesco.org/languages-atlas/index.php>). We are seeking comment on whether a list such as the UNESCO's Atlas of the World's Languages in Danger would be a useful tool for the Department to use when distinguishing among languages. These proposed distinctions would address a major concern raised by Tribal leaders during Tribal consultation about how we would consider the same language that is spoken in different regions and may or may not have the same dialect.

With regard to applying this type of distinction during a grant competition, in the NIA the Department would strongly recommend that all prospective applicants submit a letter of intent to apply and include the language, region, and community to be served by the proposed project, and whether it was proposing a new or existing program. We

would then make public a list of the potential applicants and the requested information. This would allow prospective applicants to be aware of others who may be proposing a project in the same language.

Proposed Requirement--Diversity of Languages:

To ensure a diversity of languages as required by statute, the Department will not fund more than one project in any competition year that proposes to use the same Native American language, assuming there are enough high-quality applications. In the event of a lack of high-quality applications in one competition year, the Department may choose to fund more than one project with the same Native American language.

Proposed Program Requirement 3--Geographic Distribution

Background: In the Explanatory Statement Congress provided with the Department of Education Appropriations Act, 2020, Congress stated that these funds should "support the most extensive possible geographical distribution and language diversity." We are proposing a program requirement to reflect this intent. In the event that all projects with the highest ratings propose to serve students in the same State, the Department will award a grant to the project that receives the highest number of points and proposes to serve students in a different State, assuming such project



is high-quality. Accordingly, the Department may fund an application out of rank order.

Proposed Requirement--Geographic Distribution:

To ensure geographic diversity, assuming there are enough high-quality applications, the Department will not exclusively fund projects that all propose to serve students in the same State in any competition year. In the event of a lack of high-quality applications in one competition year, the Department may choose to fund only applications that propose to provide services in one State.

Statutory Program Requirement: The following program requirement is directly from statute and we have indicated in parentheses the specific statutory citation for this requirement.

ISDEAA Statutory Hiring Preference:

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (ISDEAA) (Pub. L. 93-638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned

economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant. (25 U.S.C. 5307(b))

(b) For purposes of the ISDEAA statutory hiring preference only, an Indian is a member of any federally recognized Indian Tribe.

#### PROPOSED DEFINITIONS

Background: The Assistant Secretary proposes the following definitions for this program. These proposed definitions, intended to clarify eligibility and program requirements for the program, were used in the FY 2017 competition, with the exception of Indian organization, which is the same definition used in the Indian Professional Development Program (34 CFR 263.3). We may apply one or more of these definitions in any year in which this program is in effect.

Indian organization (or Tribal organization) means an organization that—

- (1) Is legally established—
  - (i) By Tribal or inter-Tribal charter or in accordance with State or Tribal law; and
  - (ii) With appropriate constitution, bylaws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction of or by charter from the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

Tribe means either a federally recognized Tribe or a State-recognized Tribe.

Statutory Definitions: The following definitions are directly from statutes governing the NAL@ED program. We have indicated in parentheses the specific statutory citation for each of these definitions.

Native American means: (1) "Indian" as defined in section 6151(3) of the ESEA (20 U.S.C. 7491(3)), which includes individuals who are Alaska Natives and members of federally recognized or State recognized Tribes; (2) Native Hawaiian; or (3) Native American Pacific Islander. (ESEA secs. 6151(3) and 8101(34))

Native American language means the historical, traditional languages spoken by Native Americans. (ESEA sec. 8101(34))

Tribal college or university means an institution that—

(1) Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801, *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a note); or

(2) Is cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note). (ESEA sec. 6133 and section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c))

#### PROPOSED SELECTION CRITERIA

We propose the following selection criteria for evaluating an application under this program. Most of the selection criteria also appeared in the FY 2017 NIA. The first proposed factor under Quality of Project Design has been revised to clarify that language fluency should be grade-level appropriate, as opposed to "high-fluency," which implies a level of fluency that may not be a realistic goal for an elementary grade level program to carry out within a three-year period. The second proposed factor addresses the role of family engagement. Evidence-

based research in language acquisition finds that conducting family-oriented activities, whether at home or in school, increases the likelihood that the student will develop language proficiency. Current grantees have also identified family engagement as a benefit, particularly since many current NAL@ED projects serve students in Kindergarten to Grade 2. The third proposed factor addresses the quality of the plan to develop and administer pre- and post-assessments of Native American language proficiency for participating students.

Under Quality of Project Services, the first proposed factor addresses grade-level appropriate instruction in the Native American language. The subsequent factors under Quality of Project Services are similar as those that appeared in the FY 2017 NIA. The next selection criterion, Quality of Project Personnel, is based partially on EDGAR selection criterion in 34 CFR 75.210(e) and appeared in the FY 2017 NIA but is and slightly modifies here to omit the specific qualifications for key project personnel and project consultants and contractors. Instead, we focus on evaluating an application's use of its teachers and their experience as we believe this is critical to a successful project. For the final selection criterion, Adequacy of Resources, which appeared in the 2017 NIA, we use identical

language of the first factor and omit the last two, as we believe it is most important to focus on experience in operating Native American language programs. We may apply one or more of these criteria in any year in which this program is in effect. In the NIA, we will announce the maximum possible points assigned to each criterion.

(a) Quality of the project design. The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers one or more of the following factors:

(1) The extent to which the project design will ensure that students progress toward grade-level and developmentally appropriate fluency in the Native American language.

(2) The extent to which the proposed project will incorporate parent engagement and participation in Native American language instruction.

(3) The quality of the approach to developing and administering pre- and post-assessments of student Native American language proficiency, including consultation with individuals with assessment expertise, as needed.

(b) Quality of project services. The Secretary considers the quality of the services to be provided by the

proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers one or more of the following factors:

(1) The quality of the plan for supporting grade-level and developmentally appropriate instruction in a Native American language by providing instruction of or through the Native American language.

(2) The extent to which the project will provide professional development for teachers and, as appropriate, staff and administrators to strengthen the overall language proficiency and academic goals of the school(s) that will be served by the project, including cultural competence training for all staff in the school(s).

(3) The extent to which the percentage of the school day that instruction will be provided in the Native American language is ambitious and is reasonable for the grade level and population served.

(c) Quality of project personnel. The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color,

national origin, gender, age, or disability.

In addition, the Secretary considers the extent to which teachers of the Native American language who are identified as staff for this project have teaching experience and are fluent in the Native American language.

(d) Adequacy of resources. The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the extent to which the applicant or a partner has experience in operating a Native American language program.

#### Final Priorities, Requirements, Definitions, and Selection

Criteria: We will announce the final priorities, requirements, definitions, and selection criteria in a document in the *Federal Register*. We will determine the final priorities, requirements, definitions, and selection criteria after considering responses to this document and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, and selection criteria subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use any of the final priorities,



requirements, definitions, and selection criteria, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. The proposed priorities, requirements, definitions, and selection criteria are not a significant regulatory action. Therefore, the requirements of Executive Order 13771 do not apply.

We have also reviewed these proposed priorities, requirements, definitions, and selection criteria under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order

12866. To the extent permitted by law, Executive Order  
13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed priorities, requirements, definitions, and selection criteria only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that these proposed priorities, requirements, definitions, and selection criteria are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory

action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

#### Discussion of Costs and Benefits:

We have determined that these proposed priorities, requirements, definitions, and selection criteria would impose minimal costs on eligible applicants. Program participation is voluntary, and the costs imposed on applicants by these proposed priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an application. The potential benefits of implementing the programs--for example, establishing partnerships among parties with mutual interests in developing Native language programs, and planning concrete strategies for supporting Native language revitalization--would outweigh any costs incurred by applicants, and the costs of carrying out activities associated with the application would be paid for with program funds. For these reasons, we have determined that the costs of implementation would not be excessively burdensome for eligible applicants, including small entities.

#### Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed priorities, requirements, definitions, and selection criteria easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the ADDRESSES section.

#### Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a substantial economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

Although some of the Alaska Native Organizations, LEAs, and other entities that receive NAL@ED program funds qualify as small entities under this definition, the proposed definitions and requirements would not have a significant economic impact on these small entities. The Department believes that the costs imposed on an applicant by the proposed priorities, requirements, definitions, and selection criteria would be limited to the costs related to

providing the documentation outlined in the proposed definitions and requirements when preparing an application and that those costs would not be significant.

Participation in the NAL@ED program is voluntary. We invite comments from small entities as to whether they believe the proposed priorities, requirements, definitions, and selection criteria would have a significant economic impact on them and, if so, we request evidence to support that belief.

#### Paperwork Reduction Act of 1995

The proposed priorities, requirements, and selection criteria contain information collection requirements that are approved by OMB under OMB control number 1894-0006. Therefore, we will discontinue the FY 2017 information collection approved by OMB under OMB control number 1810-0731 that is set to expire April 30, 2021.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.



This document provides early notification of our specific plans and actions for this program.

#### Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. These proposed regulations may have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

#### Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on

request to the person listed under FOR FURTHER INFORMATION CONTACT.

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Dated: February 20, 2020.

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Frank T. Brogan,  
*Assistant Secretary for  
Elementary and Secondary  
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